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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

C. CASEY WHITE, Plaintiff, Cross-defendant and Respondent, v. NINA RINGGOLD, Defendant, Cross-complainant and Appellant; DAVID TILEM et al., Cross-defendants and Respondents.	B199863 (Los Angeles County Super. Ct. No. PC036491)

APPEAL from a judgment of the Superior Court of Los Angeles County, Holly E. Kendig, Judge. Modified and affirmed.

Nina Ringgold, in pro. per., for Defendant, Cross-complainant and Appellant.

Barry R. Wegman for Plaintiff, Cross-defendant and Respondent.

C. Casey White for Cross-defendants and Respondents.

Nina Ringgold (Ringgold) appeals in propria persona from a judgment against her after a court trial. The trial court awarded C. Casey White (White) $24,281.70 and prejudgment interest of $14,763, in White's action to collect attorney fees owed for White's representation of Ringgold in Ringgold's bankruptcy case. We modify the judgment to reflect the representation of the parties and we affirm.

BACKGROUND

On September 7, 1997, Ringgold, herself a licensed attorney, entered into an agreement with Tilem White & Weintraub LLP (TWW) by and through C. Casey White, for limited representation in her Chapter 7 bankruptcy case pending in the Northern District of California. Five months later, in February 1998, Ringgold substituted in a different attorney.

In January 2000, Ringgold again retained the firm, which had been reconstituted as Tilem & White LLP (TW) after Daniel Weintraub left. TW agreed to resume representation of Ringgold on the condition that she commence payment on an outstanding fee balance of $2,910.82. The representation was for the limited purpose of defending Ringgold's homestead exemption in a property on Mather Street in Oakland, and to assist her in making an offer to the trustee to purchase the Mather Street house from the bankruptcy estate.

Ringgold was unsuccessful in her attempt to acquire the property. On May 30, 2000, Ringold again substituted TW out as her bankruptcy counsel, choosing to represent herself in the bankruptcy proceeding. On June 1, 2000, White completed documents at Ringgold's request and arranged for their transmission. Ringgold owed the firm $24,451.78.

On May 31, 2002, White and David A. Tilem, the partners in TW, dissolved the partnership. In an oral agreement with Tilem, White was assigned the Ringgold account for collection.

On May 28, 2004, White filed a limited civil action against Ringgold in superior court for an account stated, written open book account, and common account, alleging that Ringgold had failed to pay $24,281.70 owed for legal services. Ringgold,

representing herself, filed a motion to dismiss the complaint for failure to comply with the notice requirement of the Mandatory Fee Arbitration Act (MFAA), which the trial court denied on December 20, 2004. Ringgold then filed a demurrer, which the trial court overruled on February 7, 2005.

Ringgold answered the complaint on March 9, 2005. Simultaneously, Ringgold filed a cross-complaint naming White and additional defendants Tilem, TW, and TWW (hereinafter Respondents), alleging ten causes of action, including professional malpractice, breach of fiduciary duty, fraud and misrepresentation, intentional infliction of emotional distress, and abuse of process. She demanded $276,000 in monetary damages, related to the failure to protect her homestead exemption in the Mather Street property. She also requested a transfer of the case to the unlimited civil division under Code of Civil Procedure section 403.030, because the amount in controversy in her cross-complaint exceeded the maximum amount of $25,000 for a limited civil case.

White answered the transferred cross-complaint on March 25, 2005, and Tilem, TWW and TW answered on April 26, 2005. Ringgold filed a series of discovery motions, all of which the trial court denied. The court granted some of Respondents' motions and denied others.

Ringgold filed a motion for summary judgment on December 27, 2005; the trial court denied that motion on August 2, 2006 after Ringgold failed to appear for the hearing.

A two-day court trial took place on August 28 and 29, 2006. Ringgold filed two posttrial motions, which the trial court denied. On March 5, 2007, the court entered judgment for White on the initial complaint, awarding White $24,281.70, the amount of unpaid attorney fees requested in the limited civil action, and $14,763 in prejudgment interest. The trial court entered judgment on the cross-complaint in favor of Respondents.

Ringgold appeals in propria persona, challenging the denial of her motion to dismiss and the overruling of the demurrer, the denials of her pretrial motions, the denial of her motion for summary judgment, the court's rulings at trial, the denials of her

posttrial motions, and the judgment against her. We affirm all the decisions of the trial court and modify the judgment to reflect the representation of the parties.

DISCUSSION

I. The trial court did not abuse its discretion in denying Ringgold's motion to dismiss.

Ringgold moved to dismiss White's complaint for lack of proper notice under the MFAA. The MFAA provides for arbitration of fee disputes to protect clients as consumers of legal services, by "alleviat[ing] the disparity in bargaining power in attorney fee matters which favors the attorney by providing an effective inexpensive remedy to a client which does not necessitate the hiring of a second attorney." (*Manatt, Phelps, Rothenberg & Tunney v. Lawrence* (1984) 151 Cal.App.3d 1165, 1174.) In Business and Professions Code section 6201, subdivision (a), the MFAA requires notice to the client of the arbitration option: "[A]n attorney shall forward a written notice to the client prior to or at the time of service of summons or claim in an action against the client, or prior to or at the commencement of any other proceeding against the client under a contract between attorney and client which provides for an alternative to arbitration under this article, for recovery of fees, costs, or both. . . . Failure to give this notice shall be a ground for the dismissal of the action . . . ." If the client receives the arbitration notice but fails to request arbitration within 30 days, the client waives the right to arbitration. (*Ibid.*)

Business and Professions Code section 6201, subdivision (a) requires the attorney to give the client notice of arbitration rights "only *after* an actual fee dispute has arisen" (*Huang v. Cheng* (1998) 66 Cal.App.4th 1230, 1234), and "at or before the time the attorney serves a lawsuit on the client." (*Law Offices of Dixon R. Howell v. Valley* (2005) 129 Cal.App.4th 1076, 1083.) "[T]he court *may, in its discretion,* dismiss the action for attorney fees where the attorney fails to give the client the requisite 6201(a) notice." (*Id.* at p. 1088; *Philipson & Simon v. Gulsvig* (2007) 154 Cal.App.4th 347, 366 [failure to comply with notice requirement "would not mandate dismissal . . . . Such dismissal is discretionary, rather than mandatory."].)

White's complaint, filed May 28, 2004, attached a letter from White's attorney dated September 15, 2003, advising Ringgold of her outstanding balance and of her right to arbitrate. Ringgold's motion to dismiss argued that she did not receive the letter and that, in any event, the letter was not a proper form of notice under the MFAA.

At the hearing on the motion to dismiss on December 20, 2004, the trial court[1] noted that its tentative ruling was to continue the matter for 30 days to allow Ringgold to seek arbitration, and that any fee "dispute," as opposed to a simple collection action, was first raised by a declaration Ringgold filed on November 17, 2004, in which she claimed White's billing was excessive and her representation deficient. The court observed that Ringgold, as an attorney, may have had constructive knowledge of the arbitration requirement, and that a continuance would serve the purpose of allowing Ringgold the opportunity to arbitrate. Rather than take the "dispositive" step of dismissal, the trial court denied the motion to dismiss and gave Ringgold 30 days to determine whether to seek arbitration.

The trial court exercised its discretionary power to deny the motion to dismiss, giving reasons related to the MFAA's purpose of leveling the playing field and requiring, at the option of the client, that an attorney arbitrate any fee dispute. Further, given that Ringgold herself is an attorney, that the complaint included a copy of a September 2003 letter advising of her right to arbitrate, and that the court allowed Ringgold 30 additional days to seek arbitration (which she did not do), Ringgold did not lose the opportunity to arbitrate, whether or not she received the September 2003 letter and subsequently failed to request arbitration within 30 days.

The trial court did not abuse its discretion in denying Ringgold's motion to dismiss.[2]

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[1] The hearing took place in the limited civil division of superior court, before the case was transferred to the unlimited civil division.

[2] We note that subdivision (b) of Business and Professions Code section 6201 provides that a client waives the right to request arbitration if the client answers the complaint before requesting arbitration, and subdivision (d)(2) provides that the right to

II. The trial court properly overruled Ringgold's demurrer.

Ringgold filed a demurrer on December 27, 2004, a week after the trial court denied her motion to dismiss. The trial court overruled the demurrer on February 7, 2005. The decision to overrule a demurrer is a legal ruling subject to de novo review on appeal, and we exercise our independent judgment as to whether the complaint states a cause of action as a matter of law. (*McMahon v. Craig* (2009) 176 Cal.App.4th 222, 228, opn. mod. __ Cal.App.4th__ [2009 WL 2713204].)

Ringgold repeats the claim made in her demurrer that the complaint alleged a prayer for damages over the $25,000 jurisdictional limit of the limited civil court. Code of Civil Procedure section 85 provides that an action shall be treated as a limited civil case if the "amount in controversy" (the "amount of the demand . . . exclusive of attorneys' fees, interest, and costs") does not exceed $25,000. White's complaint sought $24,281.70, which does not exceed the jurisdictional limit. The action was correctly treated as a limited civil case. At any rate, once Ringgold cross-complained for $270,000, the case was reclassified and transferred to the unlimited civil court.

Ringgold also argues that the complaint failed to state sufficient facts to constitute a cause of action based on the lack of notice under the MFAA. The trial court properly overruled the demurrer on this ground. The complaint alleged that Ringgold was served with a notice of her right to arbitrate before the initiation of the action, and we deem all properly pleaded material facts as true. (*McMahon v. Craig*, *supra*, 176 Cal.App.4th at p. 228.) A demurrer is not the vehicle to determine whether the pleaded notice was sufficient.

The trial court did not err in overruling Ringgold's demurrer to the complaint.

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request arbitration is waived if the client files a pleading seeking affirmative relief against the attorney for malpractice or professional misconduct. (See *Fagelbaum & Heller LLP v. Smylie* (2009) 174 Cal.App.4th 1351, 1362.) Although Ringgold argued vociferously that she had no notice of her right to arbitrate, she did not request arbitration when given an additional 30 days to do so by the trial court, and shortly thereafter waived her right to arbitration when she answered the complaint and filed a cross-complaint alleging malpractice.

III. The trial court's rulings on discovery motions were within its discretion.

A. The court did not abuse its discretion when it denied Ringgold's motion for a protective order.

After the case was transferred to the unlimited civil division and after all the Respondents had answered Ringgold's cross-complaint, Ringgold filed a motion for a protective order, which the court denied on October 26, 2005. The trial court has discretion whether to grant or deny an application for a protective order limiting the scope of discovery. (*Pratt v.Union Pacific Railroad Co.* (2008) 168 Cal.App.4th 165, 181.)

Ringgold requested the protective order after Respondents served her with a deposition notice and a request for production of documents at the deposition. On appeal, she appears to argue that submitting to the deposition and producing documents would have violated a continuing attorney-client privilege between Ringold and the two limited partnerships, TWW and TW.

Ringgold's cross-complaint against White, TWW and TW alleged professional malpractice. Evidence Code section 958 states "there is no privilege . . . as to a communication relevant to an issue of breach, by the lawyer or by the client, of a duty arising out of the lawyer-client relationship." It was not an abuse of discretion for the court to refuse to prevent Respondents from discovery relevant to their defense on Ringgold's malpractice claim in her cross-complaint.

B. The trial court did not abuse its discretion in denying Ringgold's motion to compel.

On November 21, 2005, Ringgold filed a motion to compel further responses to a request for admissions served on White, and for an order finding that Respondents did not properly verify their responses to her request for document production. The court denied the motion as untimely on February 3, 2006. "We review the trial court's order denying the motion to compel for an abuse of discretion." (*Citizens of Humanity, LLC v. Costco Wholesale Corp* (2009) 171 Cal.App.4th 1, 13.)

White served a response to Ringgold's request for admissions on May 11, 2005. Respondents filed their objections and responses to Ringgold's demand for production of documents on June 17, 2005. Ringgold did not file her motion to compel until November 21, 2005. The court concluded, at a hearing, that the motion to compel was not timely, because it was not served within 45 days of White's and Respondents' responses, as required by Code of Civil Procedure sections 2033.290, subdivision (c) (request for admissions) and section 2031.310, subdivision (c) (document demand).

Ringgold served her motion to compel further responses to the request for admissions more than six months after White's response to the request for admissions. The motion to compel was untimely as to the request for further admissions.

Respondents served their responses to Ringgold's document request on June 17, 2005, and Ringgold filed her motion to compel demanding further verification on November 21, 2005 more than five months later. Ringgold argues that the motion to compel was timely as to the document production request, because the parties stipulated to a stay of discovery from June 10, 2004 to October 15, 2005. She repudiated the stipulation, however, in letters dated July 20 and 25, 2005: she refused to abide by the stipulation because it was never made a signed order of the court. The motion to compel was filed more than four months after the Respondent's initial response to the request for documents, and it was untimely as to that request as well.

The trial court did not abuse its discretion in denying the motion to compel.

C. The trial court did not abuse its discretion in granting White's motion to compel.

Ringgold appeared at her deposition on December 1, 2005 with documents responsive to White's request to produce documents, but refused to release them or to let White view them without a protective order. On February 3, 2006, White filed a motion to compel after a futile attempt to meet and confer with Ringgold.

At the hearing on the motion to compel, Ringgold admitted that she brought the original documents to the deposition and would not allow White to view them without a signed stipulation for a protective order. The court expressed its exasperation with her

argument that she nevertheless had "produced" the documents: "[T]he representations you have made to the court, you have caused the court to be quite concerned that you have not been acting in good faith either in the production of the documents or the deposition or in what you represented to the court. You seem to believe you can tell the court that you took the documents to the deposition and that that answers the issue. ¶ And I think—let me just say on the record, Ms. Ringgold, you are an attorney, even though you are representing yourself in pro per. If you need to be refreshed on the discovery rules, I recommend that you read them." The trial court granted the motion to compel.

The trial court exercised its discretion to grant the motion, finding that Ringgold had not acted in good faith and rejecting her explanations for her failure to produce the documents. It is clear from the record that Ringgold failed to produce the requested documents, and we affirm the trial court's grant of White's motion to compel.

D. The trial court did not abuse its discretion in denying Ringgold's motion to quash.

On March 3, 2006, Ringgold moved to quash a subpoena directed by Respondents to Verdugo Trustee Service, claiming she was not properly served. The court denied Ringgold's motion to quash on June 12, 2006.

At the hearing on the motion, the trial court concluded that Ringgold was properly served with the subpoena on February 17, 2006, when Respondents mailed the subpoena to her business address, and that the subpoena was timely served at least ten days in advance of the date of production. (See Code Civ. Proc., § 1985.3.) The court rejected Ringgold's argument that the subpoena violated her right to privacy, as the motion related to the real estate that was the subject of White's, TW, and TWW's representation of Ringgold in her bankruptcy case. Further, Ringgold could not claim the privacy rights of

others (her mother, Eddye Melaragno,[3] was also named in the subpoena), and the court had before it only Ringgold's objection.

On appeal, Ringgold argues that the subpoenas were harassment, and claims, despite the proofs of service, not to have received the documents. None of these arguments demonstrates that the court abused its discretion. We affirm the denial of Ringgold's motion to quash.

E. The trial court did not abuse its discretion in granting Respondents' motion to quash deposition subpoenas for production of business records.

On March 9, 2006, Respondents filed a motion to quash deposition subpoenas for production of business records. Ringgold had subpoenaed business records from Citicorp Mortgage, Inc. and CitiMortgage, Inc. related to another property on Rosemount Road in Oakland. Respondents argued that the business records were not relevant and that Ringgold sought the records in this case to avoid the discovery cutoff date in her marital dissolution case, which was pending in Alameda Superior Court.

At the hearing on the motion to quash, the trial court stated that the Rosemount property was not relevant because it was foreclosed upon before TW was involved in the bankruptcy litigation. The court did not abuse its discretion in granting Respondents' motion to quash.

F. The court did not abuse its discretion in ordering discovery sanctions.

Ringgold argues that the trial court abused its discretion in ordering monetary sanctions against her in connection with the court's discovery rulings on February 3, 2006, June 29, 2006, and June 12, 2006, and in failing to order sanctions in favor of Ringgold in its orders of June 12, 2006 and August 2, 2006. We concluded above that none of the trial court's discovery rulings were an abuse of discretion.

Code of Civil Procedure section 2023.010 describes various misuses of the discovery process, and section 2023.030 gives the trial court power to impose sanctions

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[3] Ringgold also argues that the trial court abused its discretion in granting Respondent's motion to compel Melaragno's business records. Melaragno, not Ringgold, is the proper party to challenge the discovery ruling; she has not done so.

against a party engaging in discovery abuse. "In fact, the court is *required* to impose monetary sanctions 'unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.'" (*First City Properties, Inc. v. MacAdam* (1996) 49 Cal.App.4th 507, 515 [quoting former § 2023, subd. (b)(1) now § 2023.030, subd. (a)].) "[T]he plain language of the statute requires the trial court to impose a monetary sanction even for the first [discovery] offense. The only exception to this requirement is for a circumstance constituting a 'substantial justification' for failing to respond. The trial court must make a finding this exception exists. The court need not make an explicit finding the exception does not exist as this is implied in the order awarding sanctions." (*Parker v. Wolters Kluwer United States, Inc.* (2007) 149 Cal.App.4th 285, 294.)

The trial court did not abuse its discretion in awarding monetary sanctions against Ringgold when it made discovery rulings against her, and in similarly denying her request for sanctions when it denied her requests for discovery rulings in her favor. In fact, the court was required to award monetary sanctions to Respondents unless it explicitly found that Ringgold's discovery abuses were substantially justified. The court made no such findings. "'The power to impose discovery sanctions is a broad discretion subject to reversal only for arbitrary, capricious or whimsical action.'" (*Parker v. Wolters Kluwer United States, Inc., supra,* 149 Cal.App.4th at p. 297.) The court did not abuse its discretion in awarding monetary sanctions.

IV. The trial court properly denied Ringgold's motion for summary judgment.

The trial court denied Ringgold's motion for summary judgment on August 2, 2006, after a hearing at which Ringgold failed to appear. "While an order denying summary judgment is not directly appealable, it is reviewable after entry of judgment." (*Law Offices of Dixon R. Howell v. Valley, supra,* 129 Cal.App.4th at p. 1091.)[4] We

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[4] "Although orders denying motions for summary judgment or summary adjudication may be reviewed on direct appeal from a judgment after trial, the appellant must nevertheless show the purported error constituted prejudicial, or reversible, error (i.e. caused a miscarriage of justice)." (*Federal Deposit Ins. Co. v. Dintino* (2008) 167

review the denial of summary judgment de novo. (*Id.* at p. 1092.) It was Ringgold's burden to persuade the trial court that there were no triable issues, and that she was entitled to judgment as a matter of law. (*Id.* at p. 1091.)

Ringgold's motion alleged that four material undisputed facts negated the claims of White's complaint. We address each in turn.

A. White had no express or implied agreement with Ringgold.

Ringgold argued that it was undisputed there was never any agreement between Ringgold and White, because the initial written agreements were between Ringold and the limited liability partnerships, TWW and TW. White's declaration in opposition to the summary judgment motion stated that when TW dissolved in 2002, Tilem and White "orally agreed that the partner who was the primary attorney on any collection account would be assigned that account for collection for the benefit of the partnership. . . . [¶] From and after June 1, 2002, I was assigned the Ringgold account." The oral assignment was formalized in writing in April 2005. Civil Code section 1052 provides that a transfer may be made without writing unless a statue expressly requires a writing. There was a triable issue of fact whether, through an oral assignment, White had an agreement with Ringgold.

B. Ringgold never received proper notice of her right to arbitrate.

Ringgold argued that it was undisputed that she was never served with notice of her right to arbitrate the fee claim. White disputed this statement in her declaration, stating that in June 2001 she signed on behalf of TW and sent to Ringgold the Los Angeles County Bar Association's "Notice of Client's Right to Arbitration," and that Ringgold called and acknowledged receipt of the notice. In addition, White attached to the complaint a letter dated September 15, 2003, giving Ringgold notice of her right to arbitrate, and served an arbitration notice on Ringgold on December 3, 2004, before

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Cal.App.4th 333, 343.) The error is not prejudicial if the same question was subsequently decided adversely to the appealing party after a trial on the merits. (*Ibid.*) We find no error in the denial of summary judgment, and so we need not consider whether any of the issues were later determined adversely to Ringgold after trial. We note, however, that Ringgold unsuccessfully advanced many of the same arguments during the court trial.

Ringgold answered the complaint. There was a triable issue of fact whether Ringgold received notice of her right to arbitrate.

C. TWW ceased to exist on August 13, 1999, TW ceased to exist on September 26, 2002, and therefore Ringgold's account was terminated on that date.

Ringgold argued that under *Davidson v. Tilden* (1978) 86 Cal.App.3d 283, it was undisputed that her account terminated when the partnerships dissolved, thus placing White's complaint outside the statute of limitations. *Davidson* does not hold that an account terminates upon dissolution of a partnership. Ringgold therefore provided no legal support for her contention. Further, "a partnership is not terminated until winding up is complete." (*Zapara v. County of Orange* (1994) 26 Cal.App.4th 464, 469; see Corp. Code, §§ 16802, 16803 [dissolved partnership continues for purposes of winding up affairs, and after dissolution, partner may prosecute actions on behalf of partnership and may dispose of and transfer partnership property].) White stated in her declaration that as of July 2006 she and Tilem continued to wind up partnership affairs. There was a triable issue of fact regarding the date that Ringgold's account terminated.

To the extent that Ringgold argued that summary judgment was appropriate because White's claims were barred by the statute of limitations, evidence showed that Ringgold signed her second retainer agreement with TW on January 4, 2000, agreeing to make payments. Entries on Ringgold's account occurred as late as June 2000. White's complaint was filed May 28, 2004, within the four-year statute of limitations under Code of Civil Procedure section 337.

We affirm the trial court's order denying Ringgold's motion for summary judgment.[5]

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[5] Ringgold also argues that the court should have granted a stay of proceedings and continued the summary judgment motion and trial, while her dissolution action proceeded in a different court. The court denied the stay, concluding that Ringgold had not shown that the outcome of the dissolution action was relevant to the damages in the fee action. This was not an abuse of discretion. (See *Lerma v. County of Orange* (2004) 120 Cal.App.4th 709, 716 [within trial court's discretion to determine whether party requesting continuance of summary judgment motion has shown good cause].)

V. There was no reversible error in the proceedings at trial.

A. The court did not abuse its discretion in ordering a two-day court trial.

Ringgold claims the trial court abused its discretion when it ordered, on the first day of trial, that the court trial would be completed in two days. Ringgold initially requested a five-day jury trial; Respondents requested a two-day court trial, and the initial case management order estimated a five to seven day jury trial. Ringgold failed to timely post jury fees, however, and the court ordered a court trial. When, on the first day of trial, the court stated that it would try the case in two days, Ringgold did not object. Even on appeal, she does not describe specific prejudice from the two-day schedule. (See *Gutierrez v. Cassiar Mining Corp.* (1998) 64 Cal.App.4th 148, 161 [litigant must make offer of proof allowing trial court to assess prejudice from asserted error].) It was not an abuse of discretion to order a two-day court trial.

B. The court did not abuse its discretion in denying part of Ringgold's request for judicial notice.

On August 28, 2006, Ringgold filed a request for judicial notice asking the court to take notice of 21 items, including the records of the California Secretary of State, the State Bar Rules of Professional Conduct, a series of California statutes, California Supreme Court and Court of Appeal cases, and various documents in the court record including White's complaint. The trial court granted the motion as to the first six items, which dealt with the State Bar rules, took judicial notice on its own motion of the entire court file in the case, and noted that no judicial notice was necessary for statutes or cases. The remaining item for which judicial notice was denied was "Certified Official Records of the California Secretary of State with respect to the Limited Liability Partnership of Tilem, White & Wientraub LLP and Tilem & White, LLP." Evidence Code section 452 provides that the trial court had discretion whether to take judicial notice of the state records. We have discretion to take notice of any matter specified in section 452. (Evid. Code, § 459; see *Chas. L. Harney, Inc. v. State of California* (1963) 217 Cal.App.2d 77, 85–86 [trial court and court of appeal have power to take notice of official records of state agencies].)

Ringgold does not explain how the court's refusal to take judicial notice of the records was an abuse of discretion or how it prejudiced her case; she simply states that the records are the proper subject of judicial notice. We conclude that the court did not abuse its discretion, and that at any rate the ruling had no effect on the outcome of trial.

C. The trial court did not abuse its discretion in denying Ringgold's motions in limine.

1. Motion to exclude evidence and testimony of an oral assignment

"'"The usual purpose of motions *in limine* is to preclude the presentation of evidence deemed inadmissible and prejudicial by the moving party."' [Citation.] Although in limine motions are typically brought at the beginning of trial, they may also be brought during trial when evidentiary issues are anticipated by the parties. [Citation.] As rulings on the admissibility of evidence, they are subject to review on appeal for abuse of discretion. [Citations.]" (*Mardirossian & Associates, Inc. v. Ersoff* (2007) 153 Cal.App.4th 257, 268–269.)

The trial court denied Ringgold's motion to exclude all testimony and evidence regarding an oral assignment to White of her agreement with TWW and TW. This was not an abuse of discretion. The evidence of an oral assignment was highly relevant to White's claims.

On appeal, Ringgold argues that any oral assignment was not valid because rule 2-200(A) of the Rules of Professional Conduct for the State Bar of California prohibits a fee-splitting agreement between a bar member and "a lawyer who is not a partner of, associate of, or shareholder with the member" without consent in writing from the client. Rule 2-200 recognizes that "fee-splitting agreements create a potential conflict of interest between the client and the attorneys," and so requires the attorney's written disclosure of any fee-splitting agreement and the client's written consent to any division of fees. (*Mark v. Spencer* (2008) 166 Cal.App.4th 219, 226.) White was a partner of Tilem and Weintraub, and the partnership relationship continued during the winding-up period. (*Zapara v. County of Orange*, *supra*, 26 Cal.App.4th at p. 469 ["[a] partnership is not terminated until winding up is complete"]; Corp. Code, §§ 16802, 16803 [dissolved

partnership continues for purposes of winding up affairs, and after dissolution partner may prosecute actions on behalf of partnership and may dispose of and transfer partnership property].) There was no fee-splitting agreement in this case, and no undisclosed conflict of interest.

2. Motion for judgment on the pleadings

Ringgold filed a motion for judgment on the pleadings four days before trial. The trial court denied the motion on the first day of trial. We review de novo a judgment on the pleadings, which "tests the sufficiency of the complaint to state a cause of action. [Citation.] 'The court must assume the truth of all factual allegations in the complaint, along with matters subject to judicial notice.'" (*Miller v. Campbell, Warburton, Fitzsimmons, Smith, Mendel & Pastore* (2008) 162 Cal.App.4th 1331, 1337.)

Ringgold argues that the complaint did not state a cause of action because TW was no longer in existence and could not file a lawsuit. As we have stated, a partnership such as TW continues to exist after dissolution for the purpose of winding up its affairs. (*Zapara v. County of Orange*, *supra*, 26 Cal.App.4th at 469.) Dissolution operates prospectively, preventing a dissolved partnership from entering into *future* transactions, but continues for the purpose of winding up past or present business. Corporate Code section 16802, subdivision (a), provides: "[A] partnership continues after dissolution only for the purpose of winding up its business. The partnership is terminated when the winding up of its business is completed." White, as a person winding up the partnership's business, "may preserve the partnership business or property as a going concern for a reasonable time, prosecute and defend actions and proceedings, whether civil, criminal, or administrative . . . ." (Corp. Code, § 16803, subd. (c).)

Ringgold also argues that judgment on the pleadings was required because White's claims were barred by the statute of limitations. As we stated above, the complaint was filed May 28, 2004, within four years of the latest entries on Ringgold's account in June 2000. (See Code Civ. Proc., § 337.)

The trial court properly denied the motion for judgment on the pleadings.

VI. The trial court properly entered judgment in favor of White.

After trial, the trial court issued a comprehensive 22-page statement of decision, finding that Ringgold was not credible and that she "presented essentially no evidence to refute plaintiffs' allegations, relying instead on procedural arguments." Ringgold's objections to the court's decision are variations on the meritless arguments she has made throughout. [6]

A. The action was not barred by the statute of limitations.

The trial court found "there was one open book account at the law firm relating to the representation of Ringgold, and there were in fact entries in her account in June 2000. Therefore, the complaint was brought within the four year statute of limitations." Ringgold signed her second retainer agreement on January 4, 2000. She admits that "a book account may be based on charges alone." While she argues that "the debtor must, in addition, begin to make payments on the account which are credited to him or her and leave a balance due," she also acknowledges that she made her last payment on May 4, 2000. She thus left a balance due, which increased with further charges in June 2000.

Code of Civil Procedure section 337, subdivision 2 provides that the statute of limitations on an action upon an open book account "shall begin to run from the date of the last item." Whether a book account is open or closed (so that the statute begins to run) is a question of fact. (*Cochran v. Rubens* (1996) 42 Cal.App.4th 481, 485.) We review the trial court's factual finding that the book account was open in June 2000 for substantial evidence, which is "'"reasonable in nature, credible, and of solid value."'" (*Id.* at p. 486.) We view the evidence in the light most favorable to the judgment and presume every fact the trial court could reasonably deduce from the evidence, deferring to the court's decisions regarding the weight and credibility of the evidence. (*In re Marriage of Mix* (1975) 14 Cal.3d 604, 614.)

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[6] Ringgold also argues that there were numerous billing excesses and errors in the descriptions of the legal services performed by TW and TWW. She did not raise any billing errors at trial, and cannot raise those factual issues for the first time on appeal.

There is ample evidence to support the trial court's conclusion that the book account was open in June 2000. Ringgold made a payment on the account in May 2000, and further charges were entered in June 2000. Under Code of Civil Procedure section 337, subdivision 2, the statute of limitations began to run from the date of the June 2000 entries.

B. White had a valid assignment.

The trial court found "the Ringgold account was orally assigned to White for collection after June 2002. The oral assignment of the account to White was legally effective under Civil Code [section] 1052, and that oral agreement was memorialized in writing." As we stated above in our discussion of Ringgold's summary judgment motion, an oral assignment is legally effective under section 1052, and White testified at trial that an oral assignment took place in 2002. (See *Norton v. Consolidated Fisheries, Inc.* (1953) 120 Cal.App.2d 86, 90 [assignee is competent witness to prove oral assignment].) The later memorialization in writing was not essential to the validity of the assignment.

The evidence of a valid oral assignment was sufficient.

C. Arbitration was not a jurisdictional requirement, and dismissal was not required for lack of compliance with Business and Professions Code section 6201, subdivision (a).

Ringgold argues that Respondents failed to make a request for arbitration before White filed the lawsuit and that this was a jurisdictional prerequisite. There is no requirement of a request for arbitration before the filing of an action. Instead, Ringgold's real argument is a rehash of the claim that Respondents did not properly send her notice of her right to arbitrate under the MFAA and Business and Professions Code 6201, subdivision (a), and that the complaint therefore should have been dismissed. In our discussion of the trial court's denial of her motion to dismiss above, we explained that the MFAA requires notice of the arbitration offer, but does not *require* dismissal if notice has not been given. As the trial court noted in its statement of decision, Ringgold had numerous notices of her right to arbitrate, and at the hearing on her motion to dismiss, she declined to exercise that right.

Ringgold never attempted to exercise her right to arbitrate although she was repeatedly given notice of that right, and relinquished it entirely when she answered and countersued for malpractice. (See Bus. & Prof. Code, § 6201, subds. (b), (d)(1) [client waives right to request arbitration if client answers complaint or files malpractice action].) The trial court did not err in refusing to enter judgment for Ringgold on the basis of Business and Professions Code section 6201, subdivision (a).

D. The trial court properly granted judgment against Ringgold on her cross-complaint.

The trial court stated "Ringgold failed to establish the elements of her multiple claims against cross-defendants. On all causes of action, Ringgold failed to prove that the cross-defendants were the proximate cause of any damages allegedly sustained by her, and she also failed to prove damages. Ringgold presented virtually no competent evidence on any of these claims."

On appeal, Ringgold assigns as error the trial court's failure to give her an offset for her loss of the homestead exemption on the Mather Street property, arguing that it was malpractice for the firm not to set the matter for a hearing. As the trial court stated, however, Ringgold did not prove any damages proximately caused by Respondents' actions, and "failed to show any connection between the fact that the Trustee's objection was not set for hearing during that particular period of time that plaintiffs represented her, and any loss which she claims to have sustained." Ringgold points to nothing in the record which constitutes evidence to the contrary.

Ringgold argues that Respondents were not entitled to any fees because they failed to comply with rule 3-300 of the Rules of Professional Conduct, which prohibits attorneys from acquiring interests adverse to those of their clients. Compliance with Rule 3-300, however, is required when an attorney attempts to secure a charging lien against a client's future recovery. (*Shopoff & Cavallo LLP v. Hyon* (2008) 167 Cal.App.4th 1489, 1522.) As the trial court noted, Ringgold presented no evidence at trial that such a lien was ever created or executed.

As to Ringgold's claims of breach of fiduciary duty, fraud and misrepresentation, negligent and intentional infliction of emotional distress, abuse of process, and breach of the covenant of good faith and fair dealing, in each instance the trial court found she failed any to present evidence to establish the elements of any of these causes of action or to prove damages. On appeal, Ringgold does not direct us to any part of the trial record which convinces us otherwise.

We affirm the trial court's judgment against Ringgold on her cross-complaint.

VII. The trial court did not err in its rulings on posttrial motions.

A. It was not an abuse of discretion to grant White's motion to amend.

At the conclusion of trial, the court granted White's oral motion to amend the complaint to add a statement that White was bringing the action in her capacity as assignee. Granting leave to amend the pleadings to conform to proof during trial is within the sound discretion of the trial court and we will not disturb it on appeal absent a clear showing of abuse. (*Garcia v. Roberts* (2009) 173 Cal.App.4th 900, 909.)

Ringgold claims the amendment was an abuse of discretion because the court denied Ringgold's posttrial request to file an amended cross-complaint. She does not, however, explain how the court's rationale for granting White's request required it to grant Ringgold's request, and we do not see the connection. The trial court gave many reasons for refusing to allow Ringgold to amend, including the court's previous denial of the same motion. Ringgold does not demonstrate that the court abused its discretion in granting White's motion to amend. To the extent that Ringgold argues it was an abuse of discretion to deny her motion to file an amended cross-complaint, we conclude that the trial court was well within its discretion to deny the motion for posttrial amendment as untimely and without merit.

B. It was not an abuse of discretion to deny Ringgold's motion to strike and to reopen evidence.

A week after trial, Ringgold filed a motion to strike Respondent's answer to her cross-complaint and all evidence of an oral assignment and to reopen evidence on Ringgold's damages, because Respondents failed to produce an insurance policy in

response to Ringgold's discovery request. We review a ruling on a motion to strike for an abuse of discretion. (*Quiroz v. Seventh Ave. Center* (2006) 140 Cal.App.4th 1256, 1282.)

White testified that there was one insurance policy for the limited liability partnership, which had been issued and later revoked and was unresponsive to Ringgold's request. The trial court denied the motion as untimely because it was filed after the close of evidence and because it reiterated a discovery issue previously raised by a motion to compel filed in November 2005 and decided against Ringgold on January 30, 2006. The court declined to reconsider its previous ruling and noted that no authority supported the motion. This was not an abuse of discretion.

The court denied Ringgold's motion to reopen evidence as untimely. Decisions regarding motions to reopen are within the trial court's discretion. (*Howard Contracting, Inc. v. G.A. MacDonald Construction Co.* (1998) 71 Cal.App.4th 38, 49.) On appeal, Ringgold makes no argument regarding why this was an abuse of discretion, and we decline to create an argument for her.

C. It was not an abuse of discretion to deny Ringgold's motion for new trial and to vacate judgment.

Ringgold advanced a series of reasons in her motion for new trial and to vacate judgment, including a repeat of her assertion that the oral assignment was invalid, the failure to produce the insurance policy, judicial bias, unfair surprise in conducting a two-day trial, newly discovered evidence (in the dissolution proceedings), failure to consider offset for the loss of the homestead exemption, insufficient evidence, failure to disclose a fee-sharing agreement, failure to disclose adverse interests, and malpractice based on breach of fiduciary duty. We review the denial of a motion for new trial for abuse of discretion. (*ABF Capital Corp. v. Berglass* (2005) 130 Cal.App.4th 825, 832.)

Ringgold's arguments repeat contentions we have rejected in our discussion above. She has shown no error, and the denial of her new trial motion was not an abuse of discretion.

Ringgold does, however, raise one valid issue. The judgment does misstate the representation of the parties at trial, indicating that C. Casey White represented herself. Instead, Barry Wegman of the Law Offices of David A. Tilem represented C. Casey White, and C. Casey White represented all the other Respondents. We therefore will modify the judgment to reflect the correct representation of the parties. As the error does not affect the substantial rights of the parties, we will not disturb the judgment. (Code Civ. Proc., § 475.)

DISPOSITION

We modify the judgment to reflect that Barry Wegman of the Law Offices of David A. Tilem was counsel of record for plaintiff and cross-defendant C. Casey White, and C. Casey White was counsel of record for cross-defendants David A. Tilem, Tilem White & Wientraub, LLP, and Tilem & White LLP. In all other respects, the judgment is affirmed. Respondents are awarded their costs on appeal.

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

ROTHSCHILD, Acting P. J.

CHANEY, J.